

REMARKS

35 USC §112

Claims 60, 62 and 69 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant respectfully disagrees, especially in view of the amendments presented herein. These three claims are herein amended to remove the phrase "and m=0".

35 USC §103(a)

Claims 55-60 and 70-78 are rejected under 35 USC 103(a) as being unpatentable over Baldwin et al. (US Application 2002/0095018), in view of Hirosaki et al. (US Application 2001/0018163).

Claims 61-62 are rejected under 35 USC 103(a) as being unpatentable over Baldwin et al. (US Application 2002/0095018), in view of Hirosaki et al. (US Application 2001/0018163) as applied to claim 55, further in view of French et al. (US 6096460).

Claims 63-78 are rejected under 35 USC 103(a) as being unpatentable over Baldwin et al. (US Application 2002/0095018), in view of Hirosaki et al. (US Application 2001/0018163), further in view of French et al. (US 6096460).

Claims 55-62 and 70-78 are rejected under 35 USC 103(a) as being unpatentable over Kennedy et al. (US Application 2002/0128388), in view of Hirosaki et al. (US Application 2001/0018163).

The Applicant respectfully disagrees with each of these rejections individually and collectively.

First, it appears from the Examiner comments in the Office Action that the rejections are 102(e)/103(a) rejection. However, the Office Action states that the Applicant must show that the invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another". MPEP Section 706.02(l)(1) states that "Subject matter developed by another person, which qualifies as prior art under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." Therefore, I believe that the Examiner is applying the incorrect standard to this matter, and clarification is required.

In an effort to expedite prosecution, the Applicants enclose a Declaration under 1.132 and

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terminal disclaimers addressing the Baldwin and Kennedy references, in order to preemptively address any double patenting rejection. The current application, along with the Baldwin and Kennedy references are commonly-owned by the same party. In addition, according to the Declaration herein enclosed:

1. Both the above-referenced application, US Publication 2002/0095018 (Baldwin) and US Publication 2002/0128388 (Kennedy) were originally commonly owned by Honeywell International Inc. at the time the later invention was made.
2. Both the above-referenced application, US Publication 2002/0095018 (Baldwin) and US Publication 2002/0128388 (Kcnndey) were effectively co-pending applications.

Therefore, the Baldwin and Kennedy references should be removed as prior art references for this matter. Once these references are removed, the Hirosaki and/or French references do not preclude patentability of the current claims, because they do not – on their own or in combination – disclose, teach or suggest the subject matter of the current claims.

The undersigned Attorney-of-Record respectfully requests that the Examiner contact her to discuss this application, if this application is not in condition for allowance. The Applicants want to ensure that this application move forward quickly. Dr. Thompson can be reached at 949-224-6282 Monday through Thursday between the hours of 8AM and 5PM PDT.

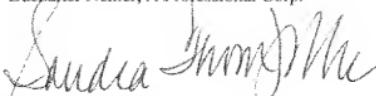
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REQUEST FOR ALLOWANCE

Claims 55-78 are pending in this application, and the Applicant respectfully requests that the Examiner reconsider all of the claims in light of the amendments presented and allow all current and pending claims.

Respectfully submitted,

Buchalter Nemer, A Professional Corp.



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